

EXHIBIT A
TO DECLARATION OF JENNIFER C. BONILLA IN SUPPORT OF JOINT MOTION
FOR THE COURT TO APPROVE PAGA SETTLEMENT AND RETAIN
JURISDICTION OVER JUDICIALLY APPROVED SETTLEMENT

United States District Court for the Southern District of California
Case Nos. 13-cv-2473-JLS (KSC) and 14-cv-2984-JLS (KSC)

JOINT STIPULATION OF SETTLEMENT AND RELEASE FOR RELATED ACTIONS
RINCON AND VALERIO ESPINOZA

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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 SERAFIN RINCON ET AL.,

12 Plaintiffs,

13 v.

14 WEST COAST TOMATO
15 GROWERS, LLC ET AL.,

16 Defendants.

Case Nos.: 13cv2473-JLS (KSC) and
14cv2984-JLS (KSC)

**JOINT STIPULATION OF
SETTLEMENT AND RELEASE FOR
RELATED ACTIONS *RINCON AND
VALERIO ESPINOZA***

Judge: Hon. Janis L Sammartino
Courtroom: 4D

18 ELISA VALERIO ESPINOZA ET
19 AL.,

20 Plaintiffs,

21 v.

22 WEST COAST TOMATO
23 GROWERS, LLC,

24 Defendant.

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1 This Joint Stipulation of Settlement and Release (hereinafter “Settlement” or
 2 “Agreement”) is made and entered into by and between plaintiffs Santiago Bautista,
 3 Guillermina Bermudez, Cipriano Capistran, Felix Gomez Diaz, Maria Martinez,
 4 Lorenzo Lopez Pastrana, Serafin Rincon, Arturo Salgado Manzano, Elisa Valerio
 5 Espinoza, and Rufino Zafra (hereinafter “Plaintiffs”), individuals, on behalf of
 6 themselves and as private attorney generals on behalf of other aggrieved employees
 7 (“PAGA Members”), on the one hand, and defendants West Coast Tomato
 8 Growers, LLC, Harry Singh & Sons, LLC, and Harry Singh and Sons Farming
 9 Partnership, L.P. (“Defendants”) on the other hand. Plaintiffs and Defendants are
 10 collectively referred to herein as “the Parties.”

11 This Stipulation addresses the simultaneous settlement of two related cases
 12 that are currently pending before the Court: (1) *Serafin Rincon et al., Plaintiffs v.*
 13 *West Coast Tomato Growers, LLC et al., Defendants*, Case No. 13cv2473-JLS
 14 (KSC) filed on September 10, 2013 (the “*Rincon Case*”); and (2) *Elisa Valerio*
 15 *Espinoza et al., Plaintiffs, v. West Coast Tomato Growers, LLC et al., Defendants*,
 16 Case No. 14cv2984-JLS (KSC) filed on December 19, 2014 (the “*Valerio Espinoza*
 17 *Case*”). The *Rincon Case* and the *Valerio Espinoza Case* are collectively referred to
 18 herein as “the Related Actions.” This Settlement resolves Plaintiffs’ individual
 19 claims in the *Rincon Case* and the *Valerio Espinoza Case*, as well as the California
 20 Private Attorneys General Act (“PAGA”) claims in each case filed on behalf of all
 21 PAGA Members whom the Plaintiffs purport to represent in the Actions.

22 **1. THE CONDITIONAL NATURE OF THIS STIPULATION.**

23 1.1 This Stipulation and all associated exhibits or attachments, which
 24 supersede any and all prior memoranda of understanding or proposals, are made for
 25 the sole purpose of settling the above-captioned Actions. This Stipulation and the
 26 settlement it evidences are made in compromise of disputed claims. Because the
 27 Actions were each pled as a Labor Code Private Attorneys General Act
 28 representative action, this Settlement must receive approval by the Court.

1 Accordingly, the Parties enter into this Stipulation on a conditional basis. If the
2 Court does not enter an Order of Approval and/or the proposed Judgment does not
3 become final for any reason, then this Stipulation shall be deemed null and void *ab*
4 *initio*; it shall be of no force or effect whatsoever; it shall not be referred to or
5 utilized for any purpose whatsoever; and the negotiation, terms and entry of the
6 Stipulation shall remain subject to the provisions of California Evidence Code §§
7 1119 and 1152, Federal Rules of Evidence Rule 408, and any other analogous rules
8 of evidence that are applicable.

9 1.2 Defendants deny all claims as to liability, damages, penalties, interest,
10 fees, restitution, injunctive relief, and all other forms of relief as well the PAGA
11 allegations asserted in the Actions, as those terms are defined in Section 2.
12 Defendants have agreed to resolve the Actions via this Stipulation, but to the extent
13 this Stipulation is deemed void or Court approval does not occur, Defendants do not
14 waive, but rather expressly reserve, all rights to challenge all such claims and
15 allegations in the Actions upon all procedural and factual grounds. Plaintiffs agree
16 that Defendants retain and reserve these rights, and agree not to argue or present
17 any argument, and hereby waive any argument that, based on this Stipulation,
18 Defendants cannot assert any and all potential defenses and privileges if the Actions
19 were to proceed.

20 1.3 Plaintiffs assert that Defendants each bear responsibility for the causes
21 alleged in this action but have agreed to resolve the Actions and claims therein via
22 this Stipulation, but to the extent this Stipulation is deemed void or Court approval
23 does not occur, Plaintiffs do not waive, but rather expressly reserve, all rights to
24 assert all such claims and allegations in the Actions against Defendants.
25 Defendants agree that Plaintiffs retain and reserve these rights and agree not to
26 argue or present any argument, and hereby waive any argument that, based on this
27 Stipulation, Plaintiffs cannot assert any and all claims alleged in the Actions if the
28 Actions were to proceed.

1 **2. DEFINITIONS.**

2 The following terms, when used in this Stipulation, shall have the following
3 meanings:

4 2.1 “Claims Period” means the one year period following mailing by the
5 Settlement Administrator of the Notice Letter and Claim Form to the PAGA
6 Members during which time the PAGA Members must submit a Claim Form in
7 order to receive a Settlement payment.

8 2.2 “Complaints” mean the operative First Amended Complaint filed by
9 Plaintiffs in the *Valerio Espinoza* Case on or about March 27, 2015, and the
10 operative Second Amended Complaint filed by Plaintiffs in the *Rincon* Case on or
11 about May 6, 2015.

12 2.3 “Court” refers to the U.S. District Court, Southern District of
13 California.

14 2.4 “Covered Period” with regard to PAGA Members in the *Rincon* Case
15 means the period from September 12, 2012, through and including the Effective
16 Date; and with regard to PAGA Members in the *Espinoza Valerio* Case who are not
17 also encompassed by the *Rincon* Case, the period from December 4, 2013, through
18 and including the Effective Date.

19 2.5 “Defense Counsel” refers to attorneys Julie A. Vogelzang and Lisa
20 Hird Chung of Schor Vogelzang LLP and to attorney William Moore of The Moore
21 Firm.

22 2.6 “Effective Date” will be the earlier of (1) December 31, 2017; or (2)
23 the date the Court signs the order granting approval of the Settlement, the final
24 judgment date, or if a timely appeal is filed, the date of final resolution of that
25 appeal (including any requests for rehearing and/or petitions for certiorari) resulting
26 in final judicial approval of the Settlement.

27 2.7 “Eligible Pay Period” means a pay period during which a PAGA
28 Member performed any work during the Covered Period.

1 2.8 “Eligible Wages Pay Period” means a pay period during which a
2 PAGA Member performed any work during the three years prior to the filing of the
3 applicable LWDA Notice, and extending through the Effective Date, which
4 includes pay periods commencing with September 12, 2010, for Field Workers and
5 commencing December 4, 2011, for Packers and Sorters, as determined by the Job
6 Designation of the PAGA Member.

7 2.9 “Field Worker” means a non-exempt employee of any Defendant
8 whose job title is classified by Defendant as a field employee in its field operations,
9 as determined by the Job Designation of the PAGA Member.

10 2.10 “Gross Settlement Amount” is the sum of One Million Dollars and No
11 Cents (\$1,000,000.00), which represents an all-in, maximum amount payable in this
12 Settlement by Defendants and includes, without limitation, Settlement
13 Administration Costs, the Individual Plaintiff Payments to each of the Plaintiffs,
14 payment to the Labor and Workforce Development Agency (“LWDA”) under
15 PAGA, Settlement Payments to all PAGA Members, penalties, interest, and PAGA
16 Counsel’s approved attorneys’ fees and costs arising from the Actions. Defendants
17 shall not be required to make any payment in excess of the Gross Settlement
18 Amount for any cause or reason.

19 2.11 “Job Designation” means the primary job title of the PAGA Member
20 during his or her employment with Defendant(s).

21 2.12 “Individual Plaintiff Payment” means the portion of the Gross
22 Settlement Amount paid to each of the ten Plaintiffs to settle his or her individual
23 claims in the Related Actions.

24 2.13 “LWDA” means California’s Labor and Workforce Development
25 Agency.

26 2.14 “LWDA Notices” means the notice letter(s) submitted by one or more
27 Plaintiffs to the LWDA pursuant to California Labor Code section 2699.3 in
28 connection with the *Valerio Espinoza* Case or the *Rincon* Case.

1 2.15 “Net Settlement Amount” is the portion of the Gross Settlement
2 Amount available for distribution to PAGA Members and the LWDA after
3 deduction of: (1) the award of attorneys’ fees and costs to PAGA Counsel; (2) the
4 Individual Plaintiff Payments to Plaintiffs; and (3) Settlement Administration Costs
5 to the Settlement Administrator. In other words, the Net Settlement Amount is that
6 portion of the Gross Settlement Amount that will be available to PAGA Members
7 and the LWDA. The Net Settlement Amount includes penalties in the form of
8 alleged underpaid wages as provided in Labor Code §§ 558 and 1197.1 representing
9 the Wage Penalty alleged to be due under those sections, 100% to be awarded to the
10 Participating PAGA Members as provided in Labor Code § 558(a)(1) and (2) and
11 Labor Code § 1197.1(a)(3). The Net Settlement Amount also includes Twenty
12 Thousand Dollars (\$20,000) representing all other civil penalties alleged to be due,
13 consisting of the PAGA Penalties, which are to be split between the LWDA and the
14 PAGA Members, with 75% going to the LWDA and 25% going to the PAGA
15 Members per Labor Code section 2699(i).

16 2.16 “Packer” means an employee of any Defendant whose job title is
17 classified by Defendant as a tomato packer in its packing shed operations.

18 2.17 “PAGA” means the California Labor Code Private Attorneys General
19 Act of 2004, codified at California Labor Code §§ 2698 *et seq.*

20 2.18 “PAGA Claims” shall mean all claims for penalties, including but not
21 limited to those penalties calculated based on the amount of the underpaid wages
22 paid as a Wage Penalty—pursuant to Labor Code § 1197.1 and Labor Code §
23 558—alleged to be due to Plaintiffs and other PAGA Members.

24 2.19 “PAGA Counsel” refers to attorneys Cynthia Rice, Michael Meuter,
25 and Jennifer C. Bonilla of California Rural Legal Assistance, Inc.

26 2.20 “PAGA Members” (or individually “PAGA Member”) is defined as all
27 current and former non-exempt Field Workers, Packers, and Sorters employed by
28 one or more Defendants at any time during the Covered Period who received a

1 paycheck, including Plaintiffs.

2 2.21 “PAGA Penalties” means the portion of the Net Settlement Amount
3 received by PAGA Members pursuant to this Settlement Agreement, 75% of which
4 will be paid to the LWDA and 25% of which will be paid to PAGA Members.
5 PAGA Penalties do not include Individual Plaintiff Payments.

6 2.22 “Participating PAGA Members” is defined as all PAGA Members who
7 file a Claim Form within the Claims Period as defined under the terms of this
8 Settlement Agreement and Plaintiffs.

9 2.23 “Plaintiffs” refers to individuals Santiago Bautista, Guillermina
10 Bermudez, Felix Gomez Diaz, Maria Martinez, Lorenzo Lopez Pastrana, Rufino
11 Zafra, Serafin Rincon, Arturo Salgado Manzano, Cipriano Capistran, and Elisa
12 Valerio Espinoza who are named plaintiffs in the *Rincon* Case or the *Valerio*
13 *Espinoza* Case. Plaintiffs are automatically deemed to be PAGA Members.

14 2.24 “Qualified Settlement Fund” or “QSF” means a fund within the
15 meaning of Treasury Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is
16 established by the Settlement Administrator for the benefit of PAGA Members.

17 2.25 “Related Actions” refer to the two civil actions filed separately in the
18 United States District Court, Southern District of California, the first entitled
19 *Serafin Rincon et al., Plaintiffs v. West Coast Tomato Growers, LLC, a California*
20 *Limited Liability Company, et al., Defendants*, Case No. 13cv2473-JLS (KSC)
21 (filed Sept. 10, 2013), and the second entitled *Elisa Valerio Espinoza et al.,*
22 *Plaintiffs, v. West Coast Tomato Growers, LLC, a California Limited Liability*
23 *Company, et al., Defendants*, Case No. 14cv2984-JLS (KSC) (filed Dec. 19, 2014),
24 including the LWDA Notices submitted by Plaintiffs in the Related Actions.

25 2.26 “Released Claims” means any and all claims, rights, demands,
26 liabilities and causes of action of any nature or description arising from, or that
27 reasonably could have been pleaded based on, the facts as pled in the Related
28 Actions. The claims released under this Settlement (“Released Claims”) shall

1 include PAGA Claims for unpaid minimum and overtime wages, failure to pay
 2 contracted wage rate, failure to pay wages at the Adverse Effect Wage Rate for all
 3 hours worked (20 C.F.R. §§ 655.210 and 655.122), failure to provide meal and/or
 4 rest periods or premium payments in lieu thereof, untimely payment of wages,
 5 inaccurate wage statements, record keeping violations, failure to pay all wages
 6 owed upon termination, failure to indemnify for business expenditures, violation of
 7 the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. §§ 1801
 8 *et seq.* and 29 C.F.R. §§ 500 *et seq.*), violation of the Fair Labor Standards Act (29
 9 U.S.C. § 201 *et seq.*), failure to comply with posting requirements, failure to
 10 maintain minimum health and safety requirements, unfair competition, as well as
 11 any and all damages, underpaid wages, restitution, disgorgement, civil penalties,
 12 statutory penalties, taxes, interest, attorneys' fees or costs resulting therefrom. The
 13 Released Claims shall extend to the Effective Date. Releases by PAGA Members,
 14 with the exception of Plaintiffs, shall be limited to PAGA Claims asserted or that
 15 reasonably could have been alleged based on the facts in the LWDA Notices and
 16 Related Actions. The Parties acknowledge that under this release, the right of the
 17 LWDA to investigate the released PAGA claims is not released, but Released
 18 Claims do include any claims for penalties by a PAGA Member as a result of any
 19 such LWDA investigation.

20 2.27 "Releasees" shall mean Defendants and their past, present and/or
 21 future parents, subsidiaries and affiliated corporations and entities, and all of their
 22 current and former officers, directors, members, managers, employees, consultants,
 23 operators, partners, shareholders, joint ventures, agents, successors, assigns or legal
 24 representatives.

25 2.28 "Settlement Administrator" shall refer to Phoenix Class Action.

26 2.29 "Settlement Administration Costs" means the fees and expenses
 27 reasonably incurred by the Settlement Administrator as a result of the procedures
 28 and processes expressly required by this Stipulation.

1 2.30 “Settlement Agreement,” “Settlement” or “Stipulation” means this
2 Joint Stipulation of Settlement and Release.

3 2.31 “Settlement Payment” means the amount to be paid to each individual
4 PAGA Member under this Settlement.

5 2.32 “Sorter” means an employee of any Defendant whose job title is
6 classified by Defendant as a tomato sorter in its packing shed operations.

7 2.33 “Wage Penalty” means the amount of allegedly underpaid wages paid
8 pursuant to Labor Code §§ 558 and/or 1197.1 encompassing the three years prior to
9 the filing of the applicable LWDA Notice, and extending through the Effective
10 Date which includes pay periods commencing with September 12, 2010, for Field
11 Workers and commencing December 4, 2011, for Packers and Sorters.

12 2.34 “WCTG” means defendant West Coast Tomato Growers, LLC.

13 **3. DESCRIPTION OF THE LITIGATION.**

14 3.1 On or about July 17, 2014, three of the seven plaintiffs named in the
15 *Valerio Espinoza* Case (i.e., Lorenzo Lopez Pastrana and Arturo Salgado Manzano)
16 sent a letter to the LWDA, the California Division of Occupational Safety & Health
17 (“DOSH”), and Defendant WCTG giving notice of their intent to pursue a
18 representative action pursuant to PAGA on behalf of themselves and the State of
19 California as well as on behalf of a proposed group of aggrieved employees.

20 3.2 On or about December 4, 2014, four of the seven plaintiffs named in
21 the *Valerio Espinoza* Case (i.e., Guillermina Bermudez, Felix Gomez Diaz, Maria
22 Martinez, and Elisa Valerio Espinoza) sent a letter to the LWDA, DOSH, and
23 Defendant WCTG giving notice of their intent to pursue a representative action
24 pursuant to PAGA on behalf of themselves and the State of California as well as on
25 behalf of a proposed group of aggrieved employees.

26 3.3 On or about September 12, 2013, the three plaintiffs named in the
27 *Rincon* Case (i.e., Santiago Bautista, Serafin Rincon, and Rufino Zafra) sent a letter
28 to the LWDA, DOSH, and Defendants giving notice of their intent to pursue a

1 representative action pursuant to PAGA on behalf of themselves and the State of
2 California as well as on behalf of a proposed group of aggrieved employees.

3 3.4 The operative First Amended Complaint in the *Valerio Espinoza* Case,
4 which was filed on March 27, 2015, asserts the following individual or
5 representative causes of action: (1) wrongful discharge in violation of public policy
6 [by individuals Valerio Espinoza, Bermudez, and Gomez only]; (2) failure to pay
7 wages at Adverse Effect Wage Rate (“AEWR”) per federal law [by all plaintiffs
8 individually]; (3) failure to pay all wages due [by all plaintiffs individually]; (4)
9 failure to pay minimum wages for all hours worked [by all plaintiffs individually];
10 (5) failure to pay overtime wages [by all plaintiffs individually]; (6) failure to pay
11 all wages due upon termination of employment [by all plaintiffs individually]; (7)
12 failure to indemnify for necessary expenditures [by all plaintiffs individually]; (8)
13 failure to provide meal periods [by individuals Lopez, Salgado, and Capistran]; (9)
14 knowing and intentional failure to provide accurate and complete itemized wage
15 statements [by all plaintiffs individually]; (10) violation of the Migrant and
16 Seasonal Agricultural Worker Protection Act (“AWPA”) for failure to pay wages
17 when due, failure to comply with posting requirements, failure to maintain
18 minimum health and safety requirements, and noncompliant record keeping [by
19 individuals Lopez, Salgado, and Capistran]; (11) unlawful competition [by all
20 plaintiffs individually]; and (12) enforcement of civil penalties under PAGA based
21 on various alleged Labor Code wage and hour and health and safety violations.

22 3.5 The operative Second Amended Complaint in the *Rincon* Case, which
23 was filed on May 6, 2015, asserts claims akin to those alleged in the *Valerio*
24 *Espinoza* Case for an overlapping group of allegedly aggrieved employees.
25 Specifically, the *Rincon* Case involves the following individual or representative
26 causes of action: (1) age discrimination [by individual Rincon]; (2) wrongful
27 discharge in violation of public policy [by individual Rincon only]; (3) failure to
28 pay contractual wages [by all plaintiffs individually]; (4) failure to pay wages at

AEWR [by all plaintiffs individually]; (5) failure to pay minimum wages for all hours worked [by all plaintiffs individually]; (6) failure to pay overtime wages [by all plaintiffs individually]; (7) failure to pay all wages due upon termination of employment [by all plaintiffs individually]; (8) failure to indemnify for necessary expenditures [by all plaintiffs individually]; (9) failure to provide meal periods [by all plaintiffs individually]; (10) knowing and intentional failure to provide accurate and complete itemized wage statements [by all plaintiffs individually]; (11) violation of the AWP for failure to pay wages when due, failure to comply with posting requirements, failure to maintain minimum health and safety requirements, and noncompliant record keeping [by all plaintiffs individually]; (12) unlawful competition [by all plaintiffs individually]; and (13) enforcement of civil penalties under PAGA based on various alleged Labor Code wage and hour and health and safety violations.

3.6 Extensive discovery and motion practice spanned several years. Each of the Parties evaluated the Related Actions based in part on formal written discovery responses, legal research and analysis, more than a three dozen depositions, input from expert witnesses, defendant WCTG's motions for summary judgment in each case, Plaintiffs' opposition to WCTG's motions, and the Court's rulings in each motion. Defendants provided thousands of documents to Plaintiffs, including copies of all applicable policies and detailed payroll and timekeeping data for almost all PAGA Members. Each of the Parties separately analyzed the data.

3.7 On May 12, 2017, the Parties voluntarily participated in a lengthy mediation with mediator Denise Asher. The Parties reached an agreement to simultaneously settle both the *Rincon* Case and *Valerio Espinoza* Case, which is the basis of this current Settlement. The complete terms of the Parties' settlement are contained within this Stipulation. At all times, the Parties' settlement negotiations have been non-collusive, adversarial and at arm's length.

3.8 Discussions between counsel for the Parties, extensive legal analysis,

1 the provision of information by Defendants to Plaintiffs, as well as the investigation
2 and evaluation of the claims of Plaintiffs by the Parties, have permitted each side to
3 assess the relative merits of the claims and the defenses in the Actions.

4 3.9 Defendants deny any liability or wrongdoing of any kind associated
5 with the claims alleged in the Related Actions, deny liability for the Released
6 Claims, and further deny that the Related Actions are appropriate for representative
7 treatment for any purpose other than settling the Related Actions. Defendants
8 contend, among other things, that it has complied at all times with the California
9 Labor Code, the Industrial Welfare Commission Wage Orders, the California
10 Business & Professions Code, the Migrant and Seasonal Agricultural Worker
11 Protection Act, the Fair Labor Standards Act, and all other state and federal wage
12 laws, and further contend that all of their respective employees were and are paid
13 properly and that the Related Actions are without merit. Defendants have denied
14 and continue to deny each and every material factual allegation and alleged claim
15 asserted against them in the Related Actions.

16 3.10 Neither the existence of this Settlement nor anything contained in this
17 Settlement shall be construed or deemed as an admission of liability, culpability,
18 negligence, or wrongdoing on the part of Defendants. Nothing herein shall
19 constitute an admission by Defendants that the Actions were properly brought as a
20 representative action other than for settlement purposes. Settlement of the Actions,
21 the negotiation and execution of this Settlement, and all acts performed or
22 documents executed pursuant to or in furtherance of this Settlement or the
23 settlement of the Actions: (a) are not, shall not be deemed to be, and may not be
24 used as, an admission or evidence of any wrongdoing or liability on the part of any
25 of the Defendants or of the truth of any of the factual allegations in the Complaints
26 in the Actions; (b) are not, shall not be deemed to be, and may not be used as, an
27 admission or evidence of any fault or omissions on the part of Defendants in any
28 civil, criminal, or administrative proceeding in any court, administrative agency or

1 other tribunal; (c) are not, shall not be deemed to be, and may not be used as, an
2 admission or evidence of the appropriateness of these or similar claims for
3 representative treatment, class certification or administration other than for
4 purposes of administering this Settlement; and (d) shall not constitute or be deemed
5 a waiver of Defendants' rights to compel arbitration of any dispute with PAGA
6 Members that is not the subject of the releases in the Settlement.

7 3.11 The Parties recognize that the issues presented in the Related Actions
8 are likely only to be resolved with extensive and costly pretrial and trial
9 proceedings, and that further litigation will cause inconvenience, distraction,
10 disruption, delay and expense disproportionate to the potential benefits of litigation.
11 The Parties have taken into account the risk and uncertainty of the outcome inherent
12 in any litigation.

13 3.12 Plaintiffs and PAGA Counsel have diligently pursued an investigation
14 of the Plaintiffs and PAGA Members' claims against Defendants.

15 3.13 Based on their own independent investigations and evaluations,
16 Defendants and Plaintiffs and their respective counsel are of the opinion that the
17 Settlement for the consideration and on the terms set forth in this Stipulation is fair,
18 reasonable and adequate and is in the best interests of Plaintiffs, the PAGA
19 Members and Defendants in light of all known facts and circumstances and the
20 risks inherent in litigation, including the potential appellate issues. Further, PAGA
21 Counsel believes that the settlement amount entered into is in the best interests of
22 the PAGA Members who are anticipated to participate and that the settlement for
23 each PAGA Member is fair, reasonable and adequate, given the inherent risk of
24 litigation.

25 3.14 The purpose of this Settlement is to settle and compromise the Related
26 Actions and all Released Claims.

27 3.15 The Parties agree that upon full execution of this Settlement, the
28 Related Actions are each stayed in their entirety save for any filings and motion

work necessary to attain Court approval of the Settlement. Should the Court not grant approval of this Settlement, the stay will be lifted five (5) days thereafter, the Parties will be restored to their positions prior to the Settlement, and the Settlement shall be null and void.

4. OPERATIVE TERMS OF SETTLEMENT.

In consideration of the mutual covenants, promises and representations set forth in this Settlement, Plaintiffs and Defendants agree to settle and compromise the Related Actions, the Released Claims, the Plaintiffs' individual claims, and Plaintiffs' PAGA Claims brought on behalf of themselves, the State of California and all PAGA Members, subject to the terms and conditions set forth in this Settlement.

4.1 This is an all-in and all-inclusive cash settlement. PAGA Members shall be provided notice and an opportunity to submit a claim upon approval of the Court pursuant to the remaining terms herein.

4.2 Gross Settlement Amount. Defendants agree to pay an amount not to exceed One Million Dollars (\$1,000,000.00) as the Gross Settlement Amount to resolve the Related Actions on an individual and PAGA-wide basis. Said sum includes: (1) Settlement Administration Costs, estimated to be up to \$30,000; (2) reasonable fees and costs to PAGA Counsel as approved by the Court of up to \$150,000, including \$39,485.99 in expenses, guaranteed fees of \$60,504.01, and a possible additional distribution of up to \$50,000 only in the event that there are funds left in the PAGA Members fund after all Participating PAGA Members have been fully paid 100% of the PAGA Penalties and Wages Penalties according to the provisions and formula in 4.8.6(d), 8.4.1, and 8.5, for which PAGA Counsel shall receive an IRS 1099 form; (3) Individual Plaintiff Payments in the collective amount of Two Hundred and Fifty Five Thousand Dollars (\$255,000.00); and (4) the Net Settlement Amount to be paid to the Participating PAGA Members who file a claim within the Claims Period set forth in the Settlement Agreement and to

1 the LWDA.

2 4.3 As Individual Plaintiff Payments, Defendants will pay Plaintiffs the
3 following sums in the total amount of \$255,000.00 as follows: Serafin Rincon,
4 \$56,300.00; Santiago Bautista, \$29,100.00; Rufino Zafra, \$9,400.00; Felix Gomez
5 Diaz, \$31,600.00; Maria Martinez, \$7,200.00; Lorenzo Lopez Pastrana,
6 \$19,700.00; Cipriano Capistran, \$18,800.00; Elisa Valerio Espinoza, \$31,600.00;
7 Guillermina Bermudez, \$31,600.00; and Arturo Salgado Manzano, \$19,700.00.

8 4.4 Net Settlement Amount Distribution. The Net Settlement Amount
9 shall be apportioned in the following manner: \$20,000 shall be attributed to
10 PAGA Penalties and paid to the LWDA and Participating PAGA Members, which
11 shall be distributed with 75% going to the LWDA and 25% going to PAGA
12 Members. The remainder of the Net Settlement Amount shall first be distributed
13 to Participating PAGA Members in an amount not exceeding the Wage Penalty
14 calculated to be due to the Participating PAGA Members. In the event that the
15 remainder of the Net Settlement Amount is not sufficient to pay all Wage Penalties
16 calculated to be due to the Participating PAGA Members, the remainder will be
17 distributed pro rata to the Participating PAGA Members.

18 4.5 Any funds not distributed after payment of the Wage Penalty shall be
19 paid as follows: up to 25% of the unpaid amount shall be paid to PAGA Counsel
20 as additional attorneys' fees, however, such amount shall in no event exceed
21 \$50,000. The rest shall be paid pursuant to the PAGA Penalties formula and
22 distributed with 75% going to the LWDA and 25% to the Participating PAGA
23 Members.

24 4.6 To the extent Settlement Administration Costs or fees or costs to
25 PAGA Counsel are lower than those specified in this Settlement, the difference
26 will be allocated to the Net Settlement Amount. If Settlement Administration
27 Costs exceed the amount set forth in this Stipulation, the Parties will seek approval
28 for the additional amount to be paid from the Gross Settlement Amount, and any

1 such costs denied by the Court will be split equally between the Parties.

2 4.7 Installments. The Gross Settlement Amount will be paid by
3 Defendants in three installments:

4 (a) \$250,000.00 (25% of the Gross Settlement Amount) on or
5 before December 31, 2017;

6 (b) \$375,000.00 (37.5% of the Gross Settlement Amount) on or
7 before December 31, 2018; and

8 (c) \$375,000.00 (37.5% of the Gross Settlement Amount) on or
9 before December 31, 2019.

10 4.8 Allocation of Net Settlement Amount. Each Participating PAGA
11 Member shall receive a pro-rata portion of the Net Settlement Amount. The Net
12 Settlement Amount shall be distributed in the Second and Third Installment
13 Portions, as set forth in Paragraphs 8.4 and 8.5 and their subsections of this
14 Stipulation.

15 4.8.1 A list of eligible PAGA Members and their last contact
16 information and taxpayer I.D. information or social security number, Job
17 Designation, and other information in accordance with the Database defined in
18 Paragraph 8.1 shall be provided by Defendants to the Settlement Administrator by
19 no later than thirty (30) calendar days after approval by the Court of the Settlement.
20 Notice in the form attached hereto as **Exhibit 1** shall be mailed to each PAGA
21 Member advising them of the right to participate in the PAGA Settlement and of
22 the Covered Period and providing them with a copy of the Claim Form attached
23 hereto as **Exhibit 2**. Such Notice Letter and Claim Form shall be in English and
24 Spanish.

25 4.8.2 PAGA Members shall have a period of one year from the date of
26 mailing by the Settlement Administrator of the Notice Letter and Claim Form to the
27 PAGA Members to submit a valid Claim Form to the Settlement Administrator.
28 The Net Settlement Amount shall be distributed as follows:

1 4.8.3 First, the Settlement Administrator will allocate \$20,000 of the
2 Net Settlement Amount as the PAGA Penalties amount under the terms of this
3 Settlement Agreement, 75% of which shall be paid to the LWDA and 25% of which
4 shall be paid to Participating PAGA Members.

5 4.8.4 Second, the Settlement Administrator will calculate the total
6 number of Eligible Pay Periods worked by each Participating PAGA Member
7 during the Covered Period in the *Rincon* Case, and then separately calculate the
8 total number of Eligible Pay Periods worked by each Participating PAGA Member
9 during the different Covered Period in the *Valerio Espinoza* Case. Each Eligible
10 Pay Period will identify the Participating PAGA Member's job designation. For
11 PAGA Members who are eligible for payments under both the *Rincon* Case and the
12 *Valerio Espinoza* Case, the Settlement Administrator will compare whether the
13 PAGA Member worked a greater number of Eligible Pay Periods during the *Rincon*
14 Case Covered Period or the *Valerio Espinoza* Case Covered Period, and apply the
15 greater of these two numbers to that PAGA Member. Accordingly, each PAGA
16 Member will have one Eligible Pay Periods number.

17 4.8.5 Third, the number of Eligible Pay Periods for all Participating
18 PAGA Members will be added together to reflect the "Total Eligible Pay Periods."
19 The Net Settlement Amount will be divided by the Total Eligible Pay Periods to
20 determine a "Pay Period Amount."

21 4.8.6 Fourth, for each Participating PAGA Member, the "Wage
22 Penalty" amount under Labor Code sections 558 and 1197.1 shall be calculated as
23 follows:

24 (a) Field Workers. The number of Eligible Wages Pay Periods
25 worked by the individual PAGA Member multiplied by the amount of
26 \$277.69 for Eligible Wages Pay Periods in the year 2010, \$388.32 for
27 Eligible Wages Pay Periods in the year 2012, \$395.90 for Eligible
28 Wages Pay Periods in the year 2013, \$409.23 for Eligible Wages Pay

1 Periods in the year 2014, \$426.96 for Eligible Wages Pay Periods in
2 the year 2015, \$461.31 for Eligible Wages Pay Periods in the year
3 2016, and \$503.40 for Eligible Wages Pay Periods in the year 2017.
4 The resulting number is the Wage Penalty for Field Workers.

5 (b) Packers. The number of Eligible Wages Pay Periods worked by
6 the individual PAGA Member multiplied by the amount of \$58.34 for
7 Eligible Wages Pay Periods in the year 2012, \$69.67 for Eligible
8 Wages Pay Periods in the year 2013, \$68.36 for Eligible Wages Pay
9 Periods in the year 2014, \$70.48 for Eligible Wages Pay Periods in the
10 year 2015, \$75.89 for Eligible Wages Pay Periods in the year 2016,
11 and \$83.05 for Eligible Wages Pay Periods in the year 2017. In
12 addition to the weekly amounts to be paid, Packers shall be paid a flat
13 amount for each year in which the Packer has an Eligible Wages Pay
14 Period. Those amounts are set as follows: \$36.72 in the year 2012,
15 \$37.48 in the year 2013, \$40.02 in the year 2014, \$40.66 in the year
16 2015, \$43.78 in the year 2016, and \$46.14 in the year 2017. The
17 resulting number combining the weekly amount and the flat rate
18 amount is the Wage Penalty for Packers.

19 (c) Sorters. Sorters shall be paid a flat amount for each year in which
20 the Sorter has an Eligible Wages Pay Period. Those amounts are set
21 as follows: \$36.72 in the year 2012, \$37.48 in the year 2013, \$40.02
22 in the year 2014, \$40.66 in the year 2015, \$43.78 in the year 2016, and
23 \$46.14 in the year 2017. The resulting number is the Wage Penalty for
24 Sorters.

25 (d) The Settlement Administrator shall then determine whether the Net
26 Settlement Amount, after being reduced by the \$20,000 PAGA Penalty
27 allocation described in 4.8.3, is a sufficient amount to allow for
28 distribution of the Wage Penalties to all Participating PAGA Members.

If it is, those amounts will be credited to each Participating PAGA Member. Any amount remaining after allocation of the Wage Penalties to the Participating PAGA Members shall be allocated pro rata to the Participating PAGA Members. Fifty percent (50%) of any amount remaining after allocation of the Wage Penalty to the Participating PAGA Members shall be allocated pro rata to the Participating PAGA Members. Twenty-five percent (25%) of any amount remaining after allocation of the Wage Penalty to the Participating PAGA Members, but in no event an amount greater than \$50,000, shall be allocated to PAGA Counsel as further attorneys' fees and costs; the greater of 25% or any amount remaining after the pro rata distribution and payment of attorneys' fees shall be included as part of the PAGA Penalty fund to be distributed pursuant to section 4.5.

4.8.7 Finally, the PAGA Members' 25% share of \$20,000 in PAGA Penalties as provided in section 4.8.3, plus the unclaimed amounts allocated to the PAGA Penalty fund in section 4.8.6(d), shall be added together and divided by the Total Eligible Pay Periods Amount to arrive at the "PAGA Penalties Workweek Amount." The PAGA Penalties Workweek Amount will be calculated for each Participating PAGA Member by multiplying the PAGA Penalties Workweek Amount by the number of Eligible Pay Periods worked by that Participating PAGA Member. 75% of each PAGA Penalty Workweek Amount will be paid to the LWDA as is required by PAGA; the remaining amount, which is 25% of the PAGA Penalty, shall be paid through an IRS Form 1099 to the Participating PAGA Member as described below.

4.9 Fair Formula. The Parties recognize and agree that the precise value of each PAGA Penalty is difficult to determine with any certainty for any given person, or at all, and is subject to myriad differing calculations and formulas. The

Parties hereby agree that the formula for allocating payments as provided herein is reasonable and designed to provide a fair settlement to Participating PAGA Members.

4.10 PAGA Counsels' Fees and Costs. As part of the request for approval of this Settlement, PAGA Counsel will request Court approval of an initial allocation of 10 % of the Gross Settlement Amount, which is \$60,504.01 for guaranteed fees and \$39,485.99 for cost reimbursement. In the event that there is not full participation by all PAGA Members and funds are allocated to PAGA Counsel in accordance with section 4.8.5, an additional amount of up to \$50,000 may be distributed to PAGA counsel bringing the total percentage of fees and costs up to 15% of the Gross Settlement Amount. Should PAGA Counsel request, or be awarded, a lesser amount for attorneys' fees and costs, the difference shall be added to the Net Settlement Amount to be divided by PAGA Members as provided in section 4.8.6. Any attorneys' fees and costs awarded to PAGA Counsel shall fully compensate and reimburse PAGA Counsel for any and all of the work already performed in connection with the Related Actions and all work remaining to be performed in fully and finally resolving the Related Actions.

4.11 Tax Treatment of Settlement Payments.

4.11.1 The Parties agree that the Wage Penalties and PAGA Penalties paid to PAGA Members and the LWDA will be characterized 100% as penalties with no tax withholdings. Defendants will issue an IRS Form 1099 for the portion of each PAGA Penalty paid directly to PAGA Members after deducting the LWDA's 75% share.

4.11.2 The Parties agree that the Individual Plaintiff Payments to the named Plaintiffs will be characterized as follows: (i) one-quarter of the Individual Plaintiff Payment shall be allocated for payment of disputed wages, and for this portion of the Individual Plaintiff Payment, each Plaintiff shall receive an IRS W-2 form; (ii) one-half of the Individual Plaintiff Payment shall be allocated

1 for disputed penalties, and this portion of the Individual Plaintiff Payment consists
 2 of other damages and income, not wages, for which each Plaintiff shall receive an
 3 IRS 1099 form; and (iii) one-quarter of the Individual Plaintiff Payment shall be
 4 allocated for interest, and this portion of the Individual Plaintiff Payment consists
 5 of other income, not wages, for which each Plaintiff shall receive an IRS 1099
 6 form.

7 4.12 No Tax Representations. Nothing in this Settlement is intended to
 8 constitute legal advice regarding federal, state and/or local tax obligations.
 9 Plaintiffs acknowledge that they have obtained no tax advice from Defendants, and
 10 that neither Defendants nor their attorneys have made any representation
 11 concerning the tax consequences, if any, arising from this Settlement. To the
 12 extent that this Settlement or any of its attachments is interpreted to contain or
 13 constitute advice regarding any tax issue, such advice is not intended or written to
 14 be used, and cannot be used, by any person for the purpose of avoiding penalties
 15 under the Internal Revenue Code. Defendants are not responsible for any
 16 employee tax obligations regarding the allocation of the Settlement payments.
 17 Payment of PAGA Counsel's fees and costs will be reflected in a Form 1099 to
 18 PAGA Counsel, who shall assume full responsibility and liability for the payment
 19 of taxes due on such payments.

20 **5. CHANGES IN POLICIES AND PRACTICES.**

21 5.1 As a material term of this Settlement, the Parties have agreed on
 22 certain changes in defendant WCTG's current employee-related policies,
 23 procedures and practices, as set forth in **Exhibit 3** to this Stipulation ("New
 24 Practices"). WCTG agrees to proceed in good faith to implement all of the New
 25 Practices on or before May 1, 2018, or as specifically delineated in **Exhibit 3**.

26 5.2 On or before June 1, 2018, Defense Counsel will notify PAGA
 27 Counsel in writing as to the implementation status of each of the New Practices.
 28 Defense Counsel and PAGA Counsel will meet and confer regarding any New

1 Practices not implemented by this date. Impossibility of performance and/or a
 2 conflicting statute, ordinance or regulation will absolve WCTG from implementing
 3 a New Practice, upon prompt written notice to PAGA Counsel. The Parties agree
 4 that any edits, deletions or additions to **Exhibit 3** shall be made mutually by the
 5 Parties in writing without seeking Court approval.

6 **6. RELEASE OF CLAIMS.**

7 6.1 Release by Each and All PAGA Members, Including Plaintiffs. This
 8 Settlement shall result in the release by each and all PAGA Members, including
 9 Plaintiffs, of all Released Claims.

10 6.2 Release by Each and All Plaintiffs. In order to obtain the Individual
 11 Plaintiff Payment, each of the Plaintiffs on an individual basis (and not on behalf
 12 of any PAGA Members) hereby agrees to release, acquit and discharge Releasees
 13 from any and all employment-related claims against Releasees of any kind
 14 whatsoever (upon any legal or equitable theory whether contractual, common law,
 15 constitutional, statutory, federal, state, local or otherwise), whether known or
 16 unknown, that arose, accrued or took place at any time on or prior to the date on
 17 which this Stipulation is executed. Each Plaintiff expressly waives the benefit of
 18 Section 1542 of the California Civil Code which states:

19 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
 20 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS
 21 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,
 22 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
 23 AFFECTED HIS OR HER SETTLEMENT WITH DEBTOR.

24 6.3 Plaintiffs each further agree not to participate in any other class,
 25 representative or collective actions against any Releasees based on actions or
 26 occurrences that took place at any time prior to Court approval of this Settlement
 27 Agreement. If a Plaintiff does not execute this Stipulation, with all of the specific
 28 terms required herein, then Defendants shall not be required to make any
 Individual Plaintiff Payment whatsoever to that Plaintiff.

1 6.4 The Parties agree that they will support approval of this Settlement
2 and agree that they will oppose any request by the LWDA to intervene in the
3 Related Actions, object to the settlement, or otherwise seek disapproval of this
4 Stipulation by the Court.

5 6.5 This Settlement is not intended to bar any claims that, by law, may
6 not be waived, such as claims for workers' compensation benefits, unemployment
7 insurance benefits, and statutory indemnity. In addition, this general release does
8 not prevent any Plaintiff or PAGA Member from contacting, providing
9 information to, or filing a charge with any federal, state or local government
10 agency or commission, including but not limited to the Equal Employment
11 Opportunity Commission ("EEOC"), the Securities and Exchange Commission
12 ("SEC") or the National Labor Relations Board ("NLRB"). Participating PAGA
13 Members are prevented, however, to the maximum extent permitted by law, from
14 obtaining any monetary or other personal relief for any of the claims PAGA
15 Members have released in this Stipulation with regard to any charge or claim the
16 Participating PAGA Member may file or which may be filed or otherwise brought
17 on the Participating PAGA Member's behalf. Nothing in this Stipulation is
18 intended to or shall be interpreted: (i) to restrict or otherwise interfere with any
19 PAGA Member's obligation to testify truthfully in any forum; or (ii) to restrict or
20 otherwise interfere with any PAGA Member's right and/or obligation to contact,
21 cooperate with, provide information to, or participate in any investigation
22 conducted by, any government agency or commission (including but not limited to
23 the EEOC, SEC or NLRB).

24 **7. APPROVAL OF STIPULATION.**

25 7.1 The Parties recognize that in accordance with Labor Code section
26 2699(1)(2), Court approval is required in the event of any settlement of a PAGA
27 action. However, as explained in *Arias v. Superior Court* (2009) 46 Cal.4th 969,
28 the Parties are not obligated to follow the class action procedural rules in PAGA

1 cases and therefore need not obtain approval of the PAGA Settlement thorough a
 2 motion for primary or final approval. Instead, in order to comply with the
 3 requirements of Labor Code section 2699, Plaintiffs will prepare and the Parties
 4 will jointly submit a stipulation to the Court identifying the terms of the Settlement
 5 and requesting that the Court approve the Settlement ("Approval Stipulation").
 6 The entire Settlement is contingent upon the approval by the Court of the
 7 Settlement and shall be void if the Court refuses to sign the proposed order
 8 accompanying the Approval Stipulation.

9 7.2 If the Court should fail to approve the Settlement as agreed upon by
 10 the Parties, the Parties agree to coordinate efforts to address the Court's questions
 11 or concerns and resubmit the Approval Stipulation and proposed order or a noticed
 12 motion if required by the Court. If, after the Parties make a second attempt to
 13 obtain approval of the terms of the Settlement, (a) the Court fails to approve this
 14 Settlement in the form agreed to by the Parties (except for the amount of
 15 attorneys' fees or costs requested), or (b) the Court's approval of this Settlement is
 16 reversed, modified, or declared or rendered void, then (i) this Settlement shall be
 17 considered null and void; (ii) neither this Settlement nor any of the related
 18 negotiations or proceedings shall be of any force or effect; and (iii) all Parties to
 19 this Settlement shall stand in the same position, without prejudice, as if the
 20 Settlement had been neither entered into nor filed with the Court. Invalidation of
 21 any material portion of this Settlement, except for the amount of attorneys' fees
 22 and costs, shall invalidate this Settlement in its entirety unless the Parties shall
 23 subsequently agree in writing that the remaining provisions shall remain in full
 24 force and effect.

25 **8. DISTRIBUTION OF THE SETTLEMENT PROCEEDS.**

26 8.1 Within thirty (30) calendar days after the Court signs an order
 27 approving the Settlement, Defendants shall provide to the Settlement
 28 Administrator an electronic database, which will list for each PAGA Member that
 24 of 35

1 person's (i) first and last name, (ii) last known mailing address, (iii) social security
 2 number, (iv) hire and termination dates through the date the Court approves the
 3 Stipulation, and (v) Job Designation as a Field Worker, Packer, or Sorter
 4 ("Database"). This Database shall be based on the employer's payroll,
 5 timekeeping, personnel, and other business records. The Settlement Administrator
 6 shall maintain this Database, and all data contained within this Database, as private
 7 and confidential. The Settlement Administrator may not use the Database for any
 8 purpose other than to administer the Settlement as provided herein.

9 8.2 Upon receipt of the Database, the Settlement Administrator shall run
 10 all the addresses provided in the Database through the U.S. Postal Service NCOA
 11 database (which provides updated addresses for any individual who has moved in
 12 the previous four years who has notified the U.S. Postal Service of a forwarding
 13 address) to obtain current address information for each PAGA Member. The
 14 Settlement Administrator shall perform a Skip Trace on all returned mail with no
 15 forwarding address, and re-mail the Notice Letter and Claim Form within two (2)
 16 business days after a different address is located with Skip Trace.

17 8.3 First Installment Payments.

18 8.3.1 Within thirty (30) calendar days after the Court signs an order
 19 approving the Settlement or by December 31, 2017, whichever date is later,
 20 Defendants shall pay \$250,000 (25%) of the Gross Settlement Amount by wiring
 21 the funds into a Qualified Settlement Fund set up and controlled by the Settlement
 22 Administrator. This payment shall be allocated to pay Plaintiffs and the Settlement
 23 Administrator as follows: Serafin Rincon, \$50,780.39; Santiago Bautista,
 24 \$26,247.06; Rufino Zafra, \$8,478.43; Felix Gomez Diaz, \$28,501.96; Maria
 25 Martinez, \$6,494.12; Lorenzo Lopez Pastrana, \$17,768.63; Cipriano Capistran,
 26 \$16,956.86; Elisa Valerio Espinoza, \$28,501.96; Guillermina Bermudez,
 27 \$28,501.96; Arturo Salgado Manzano, \$17,768.63; and up to \$20,000.00 shall be
 28 retained by the Settlement Administrator for Settlement Administration Costs.

1 These payments represent the "First Installment Payments."

2 8.3.2 Within forty-five (45) calendar days after the Court signs an
3 order approving the Settlement or by January 15, 2018, whichever date is later, the
4 Settlement Administrator shall distribute the First Installment Payments as set
5 forth in this Stipulation.

6 8.4 Second Installment Payments.

7 8.4.1 Within 395 calendar days after the Court signs an order
8 approving the Settlement or by December 31, 2018, whichever date is later,
9 Defendants shall pay \$375,000 (37.5%) of the Gross Settlement Amount by wiring
10 the funds into a Qualified Settlement Fund set up and controlled by the Settlement
11 Administrator. This payment shall be allocated to pay the remainder of the
12 Individual Plaintiff Payments up to the amounts set forth in Paragraph 4.3 of this
13 Settlement Agreement. In addition, \$20,000.00 shall be allocated for the
14 distribution of the PAGA Penalties to Participating PAGA Members and the
15 LWDA, as provided in section 4.8 and its subsections of this Stipulation (of this
16 amount, \$15,000 will be paid to the LWDA for its 75% share of the PAGA
17 Penalties). Payment shall be retained according to the Settlement Administrator's
18 payment terms for Settlement Administration Costs. Further, \$100,000 shall be
19 allocated to pay the costs and fees awarded by the Court to PAGA Counsel.

20 8.4.2 Within 410 calendar days after the Court signs an order
21 approving the Settlement or by January 15, 2019, whichever date is later, the
22 Settlement Administrator shall distribute the Second Installment Payments as set
23 forth in this Stipulation. The Settlement Administrator shall ensure that the
24 LWDA's share of the Second Installment Payment is paid to the LWDA.

25 8.5 Third Installment Payments.

26 8.5.1 Within 760 calendar days after the Court signs an order
27 approving the Settlement or by December 31, 2019, whichever date is later,
28 Defendants shall pay an additional \$375,000 (37.5%) of the Gross Settlement

1 Amount by wiring the funds into a Qualified Settlement Fund set up and controlled
 2 by the Settlement Administrator. This payment and all remaining amounts in the
 3 Qualified Settlement Fund shall be allocated to pay the remaining PAGA Penalties
 4 to Participating PAGA Members and the LWDA as provided in sections 4.8.3
 5 through 4.8.7 of this Stipulation, any remaining Settlement Administration Costs,
 6 and any additional costs and fees awarded by the Court to PAGA Counsel by
 7 operation of section 4.5 and 4.10 of this Stipulation. These payments represent the
 8 “Third Installment Payments”.

9 8.5.2 Within 775 calendar days after the Court signs an order
 10 approving the Settlement or by January 15, 2020, whichever date is later, the
 11 Settlement Administrator shall distribute the Third Installment Payments of the
 12 Settlement payments as set forth in this Stipulation.

13 8.6 Settlement Checks to PAGA Members. The Settlement Administrator
 14 will send Settlement Payment checks via U.S. First Class mail to the each
 15 Participating PAGA Member’s last known address, as indicated on the Claim
 16 Form or as updated by the Participating PAGA Member.

17 8.6.1 A letter explaining this Settlement Agreement, which will be
 18 approved by the Parties in advance of Plaintiffs filing the approval Stipulation, and
 19 the Covered Period as described in section 4.7.1, will be included in the mailing of
 20 each Participating PAGA Member’s check (“Notice Letter”). The Notice Letter
 21 will notify each PAGA Member of the binding nature of the Released Claims
 22 pursuant to Paragraph 6.1, and the Parties agree that such shall have the same force
 23 and effect as if this Settlement were executed by each PAGA Member. A sample
 24 of this Notice Letter is attached hereto in the above-referenced **Exhibit 1**.

25 8.6.2 Each Settlement Payment check to PAGA Members will contain
 26 the following short release and waiver on the back:

27 By depositing this check, I acknowledge that I have released and
 28 discharged all of the “Released Claims” against the “Releasees”

1 as described in the section entitled "Releases" of the
2 accompanying notice letter, which I received and reviewed.

3 8.7 It will be presumed that a PAGA Member's Settlement Payment
4 check was received if the check has not been returned within thirty (30) days of the
5 original mailing of the payment check. The date of the initial mailing of the
6 payment check shall be conclusively determined according to the records of the
7 Settlement Administrator. All Settlement Payment checks shall remain valid and
8 negotiable for one hundred eighty (180) calendar days from the date of their
9 issuance. If there are uncashed checks following this period, the uncashed funds
10 shall escheat to the State of California Department of Industrial Relations
11 Unclaimed Wages Fund in the name of the PAGA Member who did not cash his or
12 her check.

13 8.8 In the event that any Defendant defaults on any payment required by
14 this Agreement, the Parties agree that judgment may be entered upon proof of non-
15 payment. Prior to judgment being entered, PAGA Counsel will notify Defense
16 Counsel in writing within 48 hours of the default. Defendants shall have 5 business
17 days after the date of the notice to cure the default. The sums in default are subject
18 to statutory interest under California laws, but such interest shall not accrue if the
19 default is cured within the 5 business days stated herein. Plaintiffs will not request
20 an entry of judgment if Defendants cure the default in full within this time period.

21 8.9 DUTIES OF THE PARTIES PRIOR TO APPROVAL.

22 8.9.1 Within thirty (30) days after full execution of this Stipulation,
23 PAGA Counsel shall prepare and the Parties shall jointly apply to the Court via the
24 fully executed Stipulation for approval of the proposed PAGA Penalties. The
25 Parties shall apply to the Court for the entry of an order approving as to form and
26 content this Stipulation.

27 8.9.2 In conjunction with the Stipulation, the Parties will submit a
28 proposed order to the Court that: (1) approves the PAGA Penalties as defined in

1 this Stipulation; (2) dismisses the Related Actions with prejudice; (3) permanently
2 releases and bars all Participating PAGA Members from prosecuting any of the
3 Released Claims against Defendants and the Releasees; and (4) waiving all rights
4 to appeal.

5 **9. MISCELLANEOUS.**

6 9.1 Authority. The signatories hereto hereby represent that they are fully
7 authorized to enter into this Settlement and bind the Parties hereto to the terms and
8 conditions hereof.

9 9.2 Mutual Cooperation. The Parties agree to fully cooperate with each
10 other to accomplish the terms of this Settlement, including but not limited to
11 execution of such documents and to take such other action as may reasonably be
12 necessary to implement the terms of this Settlement. The Parties to this Settlement
13 shall use their best efforts, including all efforts contemplated by this Settlement
14 and any other efforts that may become necessary by order of the Court, or
15 otherwise, to effectuate this Settlement and the terms set forth herein. As soon as
16 practicable after execution of this Settlement, PAGA Counsel shall, with the
17 assistance and cooperation of Defendants and their counsel, take all necessary
18 steps to secure the approval of this Settlement from the Court.

19 9.3 No Prior Assignments. The Parties hereto represent, covenant, and
20 warrant that they have not directly or indirectly, assigned, transferred, encumbered,
21 or purported to assign, transfer, or encumber to any person or entity any portion of
22 any liability, claim, demand, action, cause of action or rights herein released and
23 discharged except as set forth herein.

24 9.4 No Admission. Nothing contained herein nor in the consummation of
25 this Settlement is to be construed or deemed an admission of liability, culpability,
26 negligence, or wrongdoing on the part of Defendants or any of the Releasees.
27 Each of the Parties hereto has entered into this Settlement with the intention to
28 avoid further disputes and litigation with the attendant inconvenience and

1 expenses.

2 9.5 Non-Evidentiary Issue. Whether or not the Effective Date occurs,
 3 neither this Agreement nor any of its terms nor the Settlement itself shall be: (a)
 4 construed as, offered, or admitted in evidence as, received as, or deemed to be
 5 evidence for any purpose adverse to Defendants or any other of the Releasees,
 6 including but not limited to evidence of a presumption, concession, indication, or
 7 admission by any of the Releasees of any liability, fault, wrongdoing, omission,
 8 concession, or damage; or (b) disclosed, referred to, or offered in evidence against
 9 any of the Releasees in any further proceeding in the Related Actions, or any other
 10 civil, criminal, or administrative action or proceeding except for the purposes of
 11 effectuating the Settlement pursuant to this Stipulation or for Defendants to
 12 establish that a PAGA Member has resolved any of his/her claims released through
 13 this Settlement.

14 9.6 Attorneys' Fees, Costs and Expenses. Except as specifically set forth
 15 herein, each Party shall bear its/his/her own attorneys' fees, costs and expenses,
 16 taxable or otherwise, incurred by him/her/it/them arising out of the Related
 17 Actions, and shall not seek reimbursement thereof from any other party to this
 18 Stipulation.

19 9.7 Captions and Interpretation. Paragraph titles or captions contained
 20 herein are inserted as a matter of convenience and for reference, and in no way
 21 define, limit, extend, or describe the scope of this Settlement or any provision
 22 hereof. Each term of this Settlement is contractual and not merely a recital.

23 9.8 Modification. This Settlement may not be changed, altered, or
 24 modified, except in writing and signed by the Parties hereto, and approved by the
 25 Court. This Settlement may not be discharged except by performance in
 26 accordance with its terms or by a writing signed by the Parties.

27 9.9 Execution by Plaintiffs. Because the PAGA Members are so
 28 numerous, the Parties agree that it is impossible or impractical to have each PAGA

1 Member sign this Stipulation. It is agreed that, for purposes of seeking approval of
2 the Settlement, this Stipulation may be executed on behalf of the PAGA Members
3 by the Plaintiffs.

4 9.10 Counterparts. This Settlement may be executed in counterparts, and
5 when each party has signed and delivered at least one such counterpart, each
6 counterpart shall be deemed an original, and, when taken together with other
7 signed counterparts, shall constitute one Settlement, which shall be binding upon
8 and effective as to all Parties. The counterparts may be transmitted electronically
9 (PDF) or by facsimile.

10 9.11 Communications. The Parties and their counsel agree that they will
11 not issue any press releases or initiate any contact with the press, except to
12 publicize the claims process. All ads, public service announcements or other press
13 contacts to publicize the claims process will be limited to describing the terms and
14 conditions of the Settlement. The Parties may respond to an inquiry from the press
15 about the Related Actions only by describing what is available in public documents.

16 9.12 Neutral Employment References. Defendants and its agents shall
17 provide only dates of employment, position, and rates of pay for each of the
18 Plaintiffs if contacted by a potential employer.

19 9.13 Successors. This Settlement shall be binding upon and inure to the
20 benefit of the Parties and their respective heirs, trustees, executors, administrators,
21 successors and assigns.

22 9.14 Construction. The Parties hereto agree that the terms and conditions
23 of this Stipulation are the result of lengthy, intensive, arm's-length negotiations
24 between the Parties, and that this Stipulation shall not be construed in favor of or
25 against any Party by reason of the extent to which any Party or its counsel
26 participated in the drafting of this Stipulation.

27 9.15 Jurisdiction. Upon issuing an order granting approval of this
28 Settlement, the Court shall retain jurisdiction with respect to the implementation

1 and enforcement of the terms of the Stipulation, and all Parties hereto submit to the
 2 jurisdiction of the Court for purposes of implementing and enforcing the
 3 Settlement embodied in the Stipulation. Any action to enforce this Stipulation
 4 shall be commenced and maintained only in the Court.

5 9.16 Severability. The Parties agree that if any immaterial provision of this
 6 Stipulation is determined to be invalid, the invalid portion shall be deemed severed
 7 and the remaining provisions of the Stipulation are deemed enforceable.

8 9.17 Entire Agreement. This Stipulation and the exhibits attached hereto
 9 contain the entire agreement between the Parties relating to the Settlement of the
 10 Related Actions. Excluding any Arbitration or Confidentiality Agreement
 11 executed by PAGA Members, both of which will remain in full force and effect,
 12 and all prior or contemporaneous agreements, understandings, representations, and
 13 statements, whether oral or written and whether by a party or such Party's legal
 14 counsel, are merged herein. No other agreement, statement, or promise made as to
 15 any matter addressed in this Stipulation shall be binding or valid.

16 I HAVE READ THE FOREGOING STIPULATION. I ACCEPT AND
 17 AGREE TO THE PROVISIONS IT CONTAINS, AND HEREBY EXECUTE IT
 18 VOLUNTARILY WITH FULL UNDERSTANDING OF ITS CONSEQUENCES.
 19

20 Dated: __, 2017

By: _____
 21 Santiago Bautista
 22 Plaintiff

23 Dated: __, 2017

By: _____
 24 Guillermina Bermudez
 25 Plaintiff

1
2
3 Dated: __, 2017

By: _____
Felix Gomez Diaz
Plaintiff

4
5
6 Dated: __, 2017

By: Maria Martinez
Maria Martinez
Plaintiff

7
8
9 Dated: __, 2017

By: _____
Lorenzo Lopez Pastrana
Plaintiff

10
11
12
13
14 Dated: __, 2017

By: _____
Serafin Rincon
Plaintiff

15
16
17
18 Dated: __, 2017

By: _____
Arturo Salgado Manzano
Plaintiff

19
20
21 Dated: __, 2017

By: _____
Elisa Valerio Espinoza
Plaintiff

22
23
24
25 Dated: __, 2017

By: _____
Rufino Zafra
Plaintiff

1
2 Dated: __, 2017

3 By: _____
4 Rufino Zafra
5 Plaintiff

6 Dated: 11 / 30 2017

7 By: Harry Singh
8 Authorized Representative of
9 Defendant West Coast Tomato
10 Growers, LLC

11 Dated: 11 / 30 2017

12 By: Harry Singh
13 Authorized Representative of
14 Defendant Harry Singh & Sons, LLC

15 Dated: 11 / 30 2017

16 By: Harry Singh
17 Authorized Representative of
18 Defendant Harry Singh and Sons
19 Farming Partnership, L.P.

20 **Approved as to Form and Content:**

21 Dated: __, 2017

22 CALIFORNIA RURAL LEGAL
23 ASSISTANCE, INC.

24 By: _____
25 Cynthia L. Rice
26 Michael Meuter
27 Jennifer Bonilla
28 Attorneys for Plaintiffs

1
2 Dated: __, 2017

By: _____
Rufino Zafra
Plaintiff

3
4
5
6 Dated: __, 2017

By: _____
Authorized Representative of
Defendant West Coast Tomato
Growers, LLC

7
8
9
10 Dated: __, 2017

By: _____
Authorized Representative of
Defendant Harry Singh & Sons, LLC


11
12
13
14 Dated: __, 2017

By: _____
Authorized Representative of
Defendant Harry Singh and Sons
Farming Partnership, L.P.

15
16
17
18 **Approved as to Form and Content:**

19
20 Dated: Nov. 30, 2017

CALIFORNIA RURAL LEGAL
ASSISTANCE, INC.

21
22
23 By: 
Cynthia L. Rice
Michael Meuter
Jennifer Bonilla
Attorneys for Plaintiffs

1 Dated: Nov. 30 2017

SCHOR VOGELZANG LLP

2
3
4 By: *Lisa Hird Chung*

Julie A. Vogelzang
Lisa Hird Chung
Attorneys for Defendant
West Coast Tomato Growers, Inc.

5
6 Dated: , 2017

THE MOORE FIRM

7
8
9 By:

William Moore
Attorneys for Defendants
Harry Singh and Sons Farming
Partnership, L.P., and Harry Singh &
Sons, LLC